SUPREME COURT, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1376

CHARLIE C. SPELLERS, and
CHARZEL S. SPELLERS,

Petitioners,

v.

STEUART MOTOR COMPANY,
t/a Triangle Motors,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

CHARLIE C. SPELLERS, and
CHARZEL S. SPELLERS,
Petitioners,
4305 – 19th Street, N. E.
Washington, D. C. 20018

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PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Petitioners, Charlie C. Spellers and Charzel S. Spellers, pray that a writ of certiorari issue to review the judgment of the District of Columbia Court of Appeals rendered October 31, 1973 (Record pages 21-22).

OPINIONS BELOW

The judgment of the District of Columbia Court of Appeals, as yet unreported, appears at pages 21 & 22 of the certified record filed herein, reads in significant part –

> "This is an appeal from a summary judgment entered by the trial court in favor of appellee (defendant) and a denial of a motion for summary judgment made by the appellants (plaintiffs). We affirm the judgment of the trial court.
>
> Appellants sued appellee for wrongful repossession of an automobile. The trial court found that the repossession was accomplished pursuant to the terms of the conditional sales contract entered into between the parties and that said contract was not in violation of the laws of the District of Columbia.

* * * * *

The Memorandum Opinion and Order of the Superior Court of the District of Columbia appears at pages 5 through 8 of the record, and reads in pertinent part – pages 103-104:

> ". . . Upon the hearing of these Motions and the Court being fully advised and informed with respect to all matters relevant to this action the Court finds that there is no genuine issue of material fact with respect to the claims of these parties, and the Court finds that the plaintiffs' vehicle was repossessed pursuant to the terms and conditions of paragraph 8 of the conditional sales contract executed by the parties

> to this action which set out the terms and conditions of the transaction relating to the purchase by the plaintiffs and the sale by the defendant to the plaintiffs of the vehicle in question.
>
> The Court also concludes as a matter of law that paragraph 8 of the said contract is in conformity with and not in violation of the laws of the District of Columbia. See: D. C. Code §28:9-503 (1967 Edition).
>
> Therefore, the defendant is granted Summary Judgment dismissing the plaintiffs' Complaint. The plaintiffs' Motion for Summary Judgment is denied."

JURISDICTION

The Judgment of the District of Columbia Court of Appeals was entered October 31, 1973; and an Order denying Petition for Rehearing *En Banc* was entered November 20, 1973, Record page 30 –

> "On consideration of appellants' petition for rehearing *en banc*, and it appearing that no judge of this Court has called for a vote thereon, it is
>
> ORDERED that appellants' aforesaid petition is denied."

Jurisdiction of this Court is invoked under Title 28, United States Code Section 1257, as amended July 29, 1970, Public Law 91-358, Title I, Section 172(a)(1), 84 Stat. 590.

QUESTIONS PRESENTED

1. Whether or not the District of Columbia Court of Appeals has misconstrued or mis-applied an Act[1] of Congress and procedural regulations[2] promulgated pursuant thereto?; or

2. Whether or not the provisions[3] of the District of Columbia Uniform Commercial Code are subordinate[4] to the provisions of the District of Columbia Automobile Financing Act[5] and Procedural Regulations promulgated pursuant thereto?

3. Whether or not, a party to a conditional sales contract,[6] who is not in *para delicto* is entitled to recover damages?

---

[1] Public Law 86-431, 74 Stat. 72, April 22, 1960, Section 40-903 (c), D. C. Code, 1973 Edition, D. C. Motor Vehicle Financing.

[2] D. C. Rules and Regulations, Title 5AA, September 21, 1970, "Buying, Selling and Financing of Motor Vehicles", at page 16, Section 3.1(a) & (b), Matters to be Included in Contract.

[3] D. C. Code, Section 28:9-503 (1967 Edition) – Secured Party's Right to Take Possession After Default.

[4] D. C. Code Annotated, Sections 40-901 to 910 (1967). See also, Commentary: 37 George Washington University Law Review, at page 1079, footnote 77.

[5] See footnotes 1 & 2, *supra.*

[6] See Record page 2, D. C. Court of Appeals (Superior Court Record page 17(a)). The gravamen of the dispute–

"Salesman _____ No. _____."

4. Whether or not, punitive damages or exemplary damages is an independent[7] basis for recovery of damages in the District of Columbia for violation of a federal[8] right?

STATUTES AND REGULATIONS INVOLVED

There are no Constitutional issues involved in this proceeding. District of Columbia Code, 1973 Edition, Title 28, *Commercial Instruments and Transactions,* Section 28:9-203(2):

> "(2) A transaction, although subject to this article, is also subject to chapter . . . 9 of Title 40, relating to installment sales of motor vehicles, and in the case of conflict between the provisions of this article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein."

See *Commentary*: "Local Control of Retail Installment Sales", by Rothschild, 37 George Washington Law Review (1969), at page 1079, footnote 77.

District of Columbia Automobile Financing Act, Public Law 86-431, 74 Stat. 70. *Regulations Enforcement*: See D. C. Code, Section 40-902 (1973 Edition) –

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[7] *First National Realty Company v. Weathers,* (Mun. Ct. of Appeals, D. C., 1959), 154 A.2d 548; and *Wardman-Justice v. Petrie* 59 U.S. App. D. C. 262), 39 F.2d 512 (1939).

[8] *Basista v. Weir,* 340 F.2d, at page 87 (C.A. 3, 1965).

"(e)(1) The Commissioners are hereby authorized to make and enforce such regulations as they in their discretion deem appropriate to carry out the purposes of this section and to prevent unconscionable practices in connection with retail installment transactions, including, without limitation, provisions:

(i) governing the form and substance of instruments of security . . .

(iii) requiring that amounts due under instruments of security may be prepaid in full and that the unearned charges, whether for finance, insurance, or for other purposes, attributable to or resulting from such prepayments shall be refunded or credited . . .

Additional Regulations: See D. C. Code, Section 40-902 (1973 Edition) –

"(2) The Commissioners are further authorized, in their discretion, to make and enforce such additional regulations as they deem necessary to insure that purchasers of motor vehicles under instruments of security are not being required, directly or indirectly, to pay finance, insurance, or other charges in excess of those authorized by this Act or by the Commissioners pursuant to the authority vested in them."

Waiver Restrictions: See D. C. Code, Section 40-902, 74 Stat. 71 –

> "(f) No provision shall be inserted in any retail installment contract whereby the buyer waives or purports to waive any provision of this Act, and any such waiver or purported waiver shall be void and of no effect. The Commissioners are authorized in their discretion, by regulation (1) to prohibit the inclusion in any retail installment contract of any provision waiving or purporting to waive any provision of any regulation promulgated by the Commissioners relating to retail installment transactions, and (2) to provide that any such waiver or purported waiver, shall be void and of no effect."

Right to Bring Suit: See D. C. Code, Section 40-902, 74 Stat. 72 –

> "(c) Any person aggrieved by the violation of any law or regulation applicable to the licensee's conduct of the licensed activity shall have in addition to his right of action against such licensee, a right to bring suit against the surety on a bond authorized by this section, either alone or jointly, with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, transaction, or conduct of the licensee, or of any officer, agent, employee, or other person acting on behalf of said licensee, which is in violation of law or regulation in force in the District relating to the licensed activity. The provisions of the second, third, and the fifth

subparagraphs of paragraph (b) of the first section of the Act entitled "An Act to grant additional powers to the Commissioners, and for other purposes", approved December 20, 1944."

REGULATIONS INVOLVED

District of Columbia Register, Special Edition, D. C. Rules and Regulations, Title 5AA, Department of Economic Development, Buying, Selling and Financing of Motor Vehicles, September 21, 1970, Washington, D. C. See D. C. Code, Sections 40-902(e)(1), (i), (iii), & (vi), 74 Stat., at pages 70 & 71:

Section 3.1(b), Title 5AA. *Matters to be Included in Contract,* at page 16 –

> "(b) The original and each copy of the completed invoice or of the retail installment contract, as the case may be, shall bear the certification of the dealer that the information contained therein and required by these regulations to be itemized is true. . . . The last names and license numbers of all salesmen who participated in negotiating the sale shall also be inserted on each such invoice and each such contract, and they shall be identified thereon as such salesmen. All information required by these regulations to be inserted in blank spaces (other than signatures) shall be filled in by typewriter, or by writing such information legibly in print style."

Section 3.10. *Prohibited Contract Provisions* –

> (a) Waiver of Regulations. No person shall include in any retail installment contract any provision waiving or purporting to waive any provision of these regulations. Any provision included in any retail installment contract which waives or purports to waive any provision of these regulations shall be void and of no effect.

Section 4.2. *Refund of Finance Charge on Prepayment* –

> If any buyer prepays the balance due under an instrument of security or a refinancing contract, as provided in Section 4.1 of these regulations, he shall be entitled to receive a refund credit thereon for such prepayment. The amount of such refund credit shall be computed according to what is commonly known as "the rule of 78ths", that is, it shall represent at least as great a proportion of the finance charge or refinance charge as (i) the sum of the monthly balances beginning on the next day if the prepayment is made on the monthly anniversary date of an installment under the retail installment contract or refinance contract . . .

STATEMENT OF THE CASE

Pursuant to Section 40-902(c), D. C. Code (1967 Edition), 74 Statutes At Large, at page 72, petitioners filed a civil action for damages for wrongful repossession of

an automobile which was repossessed in violation of the District of Columbia Automobile Financing Act,[9] Title 5AA, D. C. Rules and Regulations,[10] and the criminal[11] laws of the District of Columbia. The facts are undisputed. The complaint alleged that on or about July 14 or 15, 1969, petitioners, husband and wife, entered into a conditional sales contract with the respondent, whereby the petitioners agreed to buy and the respondent agreed to sell a new 1969 Ford Ltd. The total finance price including all finance and other charges ancillary to the sale was $3,898.08. The foregoing amount was to be paid by the petitioners in 36 consecutive monthly installments commencing August 28th, 1969, and in the amount of $108.28. In addition to the $3,898.08, petitioners paid a cash down payment of $653.66. The total amount then to be paid by the petitioners including the cash sum down payment and the 36 equal consecutive installment payments was $4,551.74. Respondent failed to execute the contract in compliance with the statutes and regulations involved herein. See Section 3.1(b), Title 5AA, Regulations Involved, *supra*.

Petitioners concede that they became delinquent in their monthly payment, for December 1971 and January 1972, and as a consequence thereof the respondent without notice or judicial process, but by self-help, broke into the motor vehicle and drove it away or repossessed it, all in

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[9] See Statutes Involved, *supra*.

[10] See Regulations Involved, *supra*.

[11] 37 Stat. 656, D. C. Code, 1967 Edition, Section 22-2204.

violation of the criminal[12] laws, and the District of Columbia Automobile Financing Act and regulations promulgated pursuant thereto. See *Commentary*: at pages 1091-1092, Volume 37, George Washington Law Review, "Repossession". See also, Section 5.1, Title 5AA, D. C. Regulations.

Petitioners redeemed the automobile within 72 hours by prepaying the balance of $855.69. Respondent upon acceptance of the prepayment of the balance due under the instrument of security failed to refund or credit the petitioners with a rebate under the D. C. Rules and Regulations, Title 5AA, Section 4.2; hence, petitioners filed a civil suit for damages of $5,000.00, approximately. A hearing was held before the Honorable Eugene N. Hamilton, Judge, D. C. Superior Court. The trial court concluded "as a matter of law that paragraph 8 of the said contract is in conformity with and not in violation of the laws of the District of Columbia." The trial court and

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[12] 37 Stat. 656, D. C. Code (1967 Edition), Section 22-2204, provides in pertinent part –

> "Any person who, without the consent of the owner, shall take, use, operate, or remove, or cause to be taken, used, operated, or removed from a garage, stable, or other building, or from any place or locality on a public or private highway, park, parkway, street, lot, field, inclosure, or space, an automobile or motor vehicle, and operate or drive or cause the same to be operated or driven for his own profit, use, or purpose shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding five years, or both such fine and imprisonment."

appellate courts relied upon D. C. Code, Section 28:9-503[13] (1967 Edition). This provision of the District of Columbia Uniform Commercial Code is subordinate[14] to the District of Columbia Automobile Financing Act. See Statutes Involved, *supra.* Section 28:9-203(2), reads in significant part:

> "A transaction, although subject to this article, is also subject to chapter . . . 9 of Title 40, relating to installment sales of motor vehicles, and in case of conflict between the provisions of this article and any such statute, the provisions of such statute control."

Chapter 9 of Title 40 and regulations enunciated pursuant thereto require the respondent to insert the "last names and license numbers of all salesmen who participated in negotiating the sale" on each car invoice or conditional installment sales contract and that they "be identified thereon as such salesmen." Respondent's failure to comply

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13 "Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unsuable, and may dispose of collateral on the debtor's premises under section 28:9-504."

14 See footnote 77, at page 1079, 37 George Washington Law Review (1969-70), "Local Control of Retail Installment Sales", by Donald P. Rothschild.

therewith invalidated paragraph 8 of the conditional sales contract and precluded or made illegal the repossession.

The trial court asserted and the appellate court affirmed that petitioners "redeemed the said vehicle on February 11, 1972 and when they did so redeem the vehicle, they executed and delivered to the defendant a release and hold harmless agreement with respect to any claims arising out of that repossession." The record is devoid of any agreement evidencing the signature of petitioner, Charzel S. Spellers.

REASONS FOR GRANTING THE WRIT

There is manifest error in the construction and application and interpretation of an Act[15] of Congress and regulations[16] promulgated pursuant to that Act, in the following respects:

(A)

The "Conditional sales contract and paragraph 8 thereof" is invalid for the reason that the contract does not include matter required by the Act and Regulations. See certified record page 2, Superior Court Record page 17(a) – the omission in the contract is indicated as: "Salesman _____, No. _____." Section 40-902(e)(1), (i), D. C. Code, 1967 Edition, governs "the form and substance

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15 Public Law 86-431, 74 Stat. 70, Section 2(e)(1), D. C. Code (1967 Edition), Section 40-902(e)(1). See also, Statutes Involved, *supra.*

16 D. C. Rules and Regulations, Title 5AA. See also, Regulations Involved, *supra.*

of instruments of security." Section 3.1(b), Title 5AA, D. C. Rules and Regulations, provides, *inter alia,* that the original retail installment contract shall include the "last names and license numbers of all salesmen who participated in negotiating the sale" and "they shall be identified thereon as such salesmen." Congress authorized the Commissioner or Commissioners to make and enforce regulations as is deemed appropriate to carry out the purposes of the District of Columbia Automobile Financing Act. See *Hearings On H.R. 10683,* 86th Congress, Second Session (1960), House District of Columbia Committee, Library of Congress Reference MRR, ALC, U.S., 86th Congress Hearings, House District of Columbia Committee, J 74 .A23.

(B)

The "Car Invoice" which is part and parcel of the "Conditional Sales Contract and paragraph 8" is invalid for the reason that the "Car Invoice" does not include the matter required by the Act of Congress and D. C. Rules and Regulations. See certified record page 3, Superior Court Record page 17(c) – the omission is indicated as: "I hereby certify the information is correct as shown hereon _____

_____ (seal)." Certification of Dealer or Authorized Agent

Public Law 86-431, Sections 2(e)(1) and 2(2); and Section 3.1(b), Title 5AA, D. C. Rules and Regulations, *supra,* require that the original and each completed "Car Invoice" shall bear the certification of the dealer that the information contained thereon and required by these regulations to be itemized is true. The "Car Invoice" is not signed or signature affixed thereto, certifying that the information set forth in the "Car Invoice" is true, as required by the Act and Regulation.

(C)

Respondent failed to comply with the Congressional Mandate and Regulations enunciated pursuant thereto, relating to "Prepayment of Balance Due and Refund", Section 4.2, Title 5AA, D. C. Rules and Regulations. Record filed herewith, page 4, Superior Court Record page 17(d). Petitioners redeemed the motor vehicle Febuary 11, 1972 and respondent failed to rebate or refund. The payment receipt reads: "Account No. TM-1233 Amount paid: $855.69 Late Charge: $5.00 Check: $855.69 Cash: _____ Refunded: _____." Pursuant to Public Law 86-431 and D. C. Rules and Regulations – If any buyer prepays the balance due under an instrument of security or a refinancing contract, he shall be entitled to receive a refund credit thereon for such prepayment. Title 5AA, at page 27, D. C. Rules and Regulations.

(D)

The "release or convenant not to sue" has no application to the claim or rights of petitioner, Charzel S. Spellers, and is null and void. The statement reads, at page 3 of Certified Record filed herein, page 25 –

"To Whom It May Concern:

This is a general release to hold Steuart Motor Company harmless from all claims arising from repossession of one 1969 LTD HT Serial No. 255255, belong to @ #$%¢&*(*& ¢%@#$%. Account #TM1233

This also constitutes as a release of all claims as to personal property.

x Charlie C. Spellers"

The husband cannot by his release or admissions prejudice the wife's claims or right of action against Steuart Motor Company, respondent herein. Compare: *Gallo v. Crocker* (C.A. 5, 1963), 321 F.2d 876. See also, E V I-D E N C E key numbers 248(2) & 248(3). At page 25 of the certified record filed herein, affidavit of petitioner, Charzel S. Spellers – "1. That I have never executed and delivered, or authorized the execution and delivery to the defendant, Steuart Motor Company, a release and hold harmless for any and all claims arising from the repossession of the motor vehicle."

The release is invalid between petitioner, Charlie C. Spellers and Steuart Motor Company, for failure of consideration, or a "quid pro quo." See "Waiver Restriction", Public Law 86-431, 74 Stat. 69, at page 72, *supra.*

CONCLUSION

For the foregoing reasons the writ should be granted.

Respectfully submitted,

CHARLIE C. SPELLERS,
Petitioner, and

CHARZEL S. SPELLERS,
Petitioner,
4305 – 19th Street, N. E.
Washington, D. C. 20018

APPENDIX

District of Columbia
Court of Appeals

FILED October 31, 1973

DISTRICT OF COLUMBIA
COURT OF APPEALS

/s/ Alexander L. Stevas
Clerk

No. 7326 January Term, 1973

CHARLIE C. SPELLERS :
and :
CHARZEL S. SPELLERS, *Appellants*, :
v. : **CA-4114-72**
STEUART MOTOR COMPANY :
t/a TRIANGLE MOTORS, *Appellee*. :

Appeal from the Superior Court of the District of Columbia, Civil Division.

BEFORE: Kelly, Gallagher and Yeagley, Associate Judges.

JUDGMENT

This is an appeal from a summary judgment entered by the trial court in favor of appellee (defendant) and a denial of a motion for summary judgment made by appellants (plaintiffs). We affirm the judgment of the trial court.

Appellants sued appellee for wrongful repossession of an automobile. The trial court found that the repossession

was accomplished pursuant to the terms of the conditional sales contract entered into between the parties and that said contract was not in violation of the laws of the District of Columbia.

Recognizing an added responsibility to pro se parties to examine their cases closely so that meritorious claims will not be overlooked, we have given especially careful consideration to all of the claims of error advanced by appellants since they have proceeded pro se in this matter.

Such a review of the record and briefs convinces us that the trial court's determination and judgment were correct.

Accordingly, it is this 31st day of October 1973

ORDERED and ADJUDGED that the judgment appealed from is affirmed.

PER CURIAM.

FOR THE COURT:

/s/ Alexander L. Stevas
Alexander L. Stevas,
Clerk.

No. 7326

[Certificate of Service]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

* * * * *

MEMORANDUM OPINION

This action was commenced on May 31, 1972 when the plaintiffs filed their Complaint in this matter for wrongful repossession of a motor vehicle. The plaintiffs' Complaint alleged that on or about the 14th or 15th of July, 1969, they entered into a conditional sales contract with the defendant whereby they agreed to buy and the defendant agreed to sell a 1969 Ford Ltd. The total financed price including all finance and other charges connected with the sale was $3,898.08. This amount was to paid by the plaintiffs in 36 consecutive monthly installments beginning on the 28th of August 1969, and in the amount of $108.28. In addition to the $3,898.08, the plaintiffs paid a cash down payment of $653.66. The total amount then to be paid by the plaintiffs including the cash down payment and the 36 equal consecutive installments payments was $4,551.74.

The plaintiffs allege that they became delinquent in their December 1971 and January 1972 payments, and as a result thereof the defendant without notice to the plaintiffs and "in violation of the Uniform Consumer Credit Protection Act" repossessed the said vehicle. Plaintiffs allege that this repossession was in violation of and in breach of the terms and conditions of the Automobile Disclosure Statement and the Conditional Sales Contract pursuant to which the vehicle was produced. The plaintiffs also allege that the acts of the defendant in repossessing the plaintiffs' vehicle were willful, unlawful, violent and malicious and as a result thereof they seek punitive damages in the amount of $4,551.74.

The defendant filed its Answer wherein it basically denied all of the allegations of the plaintiffs' Complaint, except that it admitted that it entered into a contract with the plaintiffs, and that the defendant did repossess the plaintiffs' car on February 10, 1972 pursuant to the provisions of the said contract after the plaintiffs became delinquent in the payments called for thereunder. The defendant also alleges that the plaintiffs redeemed the said vehicle on February 11, 1972 and when they did so redeem the vehicle, they executed and delivered to the defendant a release and hold harmless agreement with respect to any claims arising out of that repossession.

The plaintiffs then moved for judgment on the pleadings on the basis that the terms and conditions of both the conditional sales contract and the Regulations of the District of Columbia pursuant to which their vehicle was repossessed are in violation of the Criminal laws of the District of Columbia and, therefore, void. This Motion for Judgment on the pleadings was denied by the Court on July 17, 1972. Then on July 24, 1972 the plaintiffs filed their first Motion For Summary Judgment. The basis for that first Motion For Summary Judgment was again that the repossession of their car by the defendant was in violation of the Criminal laws of the District of Columbia. The plaintiffs again took the position that any insertion into the contract of any provision pursuant to which the defendant could repossess the plaintiffs' car without judicial process was null and void. This first Motion by the plaintiffs for Summary Judgment was denied on August 16, 1972.

The plaintiffs then filed the instant Motion for Summary Judgment, their second such Motion in this case, on September 15, 1972. This second Motion for Summary

Judgment is again based primarily on the same grounds as had been the previous Motion For Summary Judgment and the Motion For Judgment on the pleadings. The defendant then on October 6, 1972 filed its Motion for Summary Judgment.

The plaintiffs' second Motion For Summary Judgment and the defendant's Motion For Summary Judgment then came on for hearing before the Court pursuant to a previous setting therein. Upon the hearing of these Motions and the Court being fully advised and informed with respect to all matters relevant to this action the Court finds that there is no genuine issue of material fact with respect to the claims of these parties, and the Court finds that the plaintiffs' vehicle was repossessed pursuant to the terms and conditions of paragraph 8 of the conditional sales contract executed by the parties to this action which set out the terms and conditions of the transaction relating to the purchase by the plaintiffs and the sale by the defendant to the plaintiffs of the vehicle in question. The Court also concludes as a matter of law that paragraph 8 of the said contract is in conformity with and not in violation of the laws of the District of Columbia. See: D. C. Code § 28:9-503 (1967 Edition).

Therefore, the defendant is granted Summary Judgment dismissing the plaintiffs' Complaint. The plaintiffs' Motion For Summary Judgment is denied. Judgment is therefore entered for the defendant with costs against the plaintiffs to abide the event.

So Ordered.

/s/ Eugene N. Hamilton
Eugene N. Hamilton
Judge

December 22, 1972

[Certificate of Service]